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May 10, 2001

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Name of Firm: U.S. Environmental Protection Agency

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VIA FACSIMILE 202-260-0018

Ms. Linda Vlier Moos  
Acting Director, National Programs Chemical Division  
United States Environmental Protection Agency  
Mail Code E723  
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401 M Street, S.W.  
Washington, D.C. 20460

Re: Albaugh, Inc.  
TSCA § 4  
40 C.F.R. Part 766, Dibenzo-Paradioxins/Dibenzofurans

Dear Ms. Moos:

I write on behalf of Albaugh, Inc. ("Albaugh") to request a meeting with you and your staff regarding Albaugh's request, first made on November 21, 2000, to terminate its obligations under the TSCA Section 4 test rule 40 C.F.R. Part 766, Dibenzo-Paradioxins/Dibenzofurans (the "Test Rule"). I understand that a meeting has been tentatively scheduled to take place on Tuesday, May 15 at 9:00 a.m. to discuss this matter, and I very much appreciate the opportunity to meet with you at that time to discuss Albaugh's request. The background of this request is set forth below.

Albaugh notified the EPA of its intent to test under this Test Rule with respect to a covered chemical (the "Test Chemical") on January 11, 1999.<sup>1</sup> Since that time Albaugh has complied with the Agency's requirements and deadlines for submission of test protocols, for which it has engaged experienced TSCA consultants for assistance in the preparation and implementation of the Test Rule. However, events have overtaken the administrative process, and Albaugh is no longer importing the chemical to which the Test Rule applies. Further elaboration follows.

<sup>1</sup> The identity of the Test Chemical is CBI information and therefore is not identified in this letter. I have copied on this letter the EPA individuals with whom Albaugh has already discussed this matter.



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Albaugh is a formulator and packager of off-patent herbicides for agricultural use. Albaugh's plant is located in St. Joseph, Missouri. With the exception of its past import of the Test Chemical, Albaugh is not a chemical manufacturer, and other than in the immediate circumstances, its activities have not been subject to TSCA requirements.

In 1998, Albaugh initiated a project to produce a herbicide active ingredient (the "Herbicide") in the United States. In pursuit of this project, Albaugh contracted with Blackman Uhler Chemical Company in Spartanburg, South Carolina to produce the Herbicide. Blackman Uhler was to produce the Herbicide using the Test Chemical as the starting material. Albaugh identified a source for the Test Chemical in the People's Republic of China. An alternative source of the Test Chemical in India was later identified.<sup>2</sup>

At the outset, Albaugh recognized that its import of the Test Chemical could subject it to TSCA requirements. Further research revealed that the substance was on the TSCA Inventory, and that it was subject to the Test Rule. Albaugh was advised, however, that it could begin its importing and manufacturing activities subject to complying with the various deadlines for notifying the Agency of its intent to conduct the required testing and for submitting protocols for conducting the testing.

On January 11, 1999, Albaugh submitted its notice of intent to test to EPA. Albaugh noted in its correspondence that it had begun importing the Test Chemical the previous November, as it was permitted to do.

Albaugh submitted a draft protocol for testing to EPA on November 15, 1999. The Agency reviewer rejected the protocol as insufficient by letter dated February 7, 2000, whereupon Albaugh engaged its present TSCA consultant, Battelle Labs, to prepare and submit a new protocol, which was done on March 24, 2000. The Agency reviewed the protocol and replied with numerous comments and requested changes on August 17, 2000. Albaugh, in conjunction with Battelle, responded to the comments and submitted its revised protocol on November 21, 2000. On April 24, 2001 the Agency reviewer contacted the undersigned and advised that the protocol was still not satisfactory. Albaugh has not received the Agency's most recent critique of its protocol in writing.

During this approximately two-year period in which Albaugh and the Agency were corresponding concerning the protocol, Albaugh for separate reasons was engaged in a continual reassessment of the Blackman Uhler project. For one thing, Blackman Uhler was having great difficulty producing the Herbicide according to the contractual unit conversion ratios; in other words, the product was more expensive to produce than had been anticipated. For another, Albaugh located a source of the Herbicide off-shore that was more economical than the product

<sup>2</sup> Albaugh switched its purchases away from the Chinese source and began purchasing exclusively from the Indian source in November of 1999.



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made by Blackman Uhler. For its part, Blackman Uhler expended more on the project than it had contemplated.

For these reasons, this year Albaugh and Blackman Uhler mutually agreed to complete the conversion of remaining stocks of the Test Chemical at Blackman Uhler into the Herbicide and to cease further production. The agreement to cease production provides that the project may be restarted on or before June 21, 2003 if Albaugh requests and Blackman Uhler agrees. This provision was included merely as a fail-safe provision; Albaugh has no intention of requesting Blackman Uhler to restart production of the Herbicide or of importing any more of the Test Chemical into the United States.

This resolution between Albaugh and Blackman Uhler was reached on February 2, 2001, but it was becoming apparent when on November 21, 2000, Albaugh requested a "deferral" of the testing requirement. I am informed that since about May 12, 2000 Albaugh has not imported any quantity of the Test Chemical into the United States, and Albaugh has no intention of importing any more of the Test Chemical into the United States. All imported quantities of the Test Chemical have been converted into the Herbicide; I am informed that there are no remaining stocks of the Test Chemical in the United States.

Under the circumstances, Albaugh respectfully requests that the Agency grant a termination of Albaugh's obligations under the Test Rule. In this connection, it is important to note that requiring the testing to proceed would require the production of additional unneeded quantities of the Test Chemical for which no known commercial use exists and which, as a result, would have to be disposed of as waste -- a result which would not seem to be in keeping with the spirit or the policy of TSCA or the mission of EPA. Moreover, to the best of Albaugh's knowledge, the foreign producers of the Test Chemical have shut down their production facilities. Albaugh does not own or control the foreign producers of the Test Chemical and cannot compel them to restart their plants. Therefore, Albaugh is not able to ensure that additional quantities of the Test Chemical can even be obtained for purposes of continuing with the Test Rule.

We believe that the Agency has the authority to grant Albaugh's request for a termination of its obligations under the Test Rule, in that Albaugh is no longer manufacturing, processing, distributing, or using the Test Chemical in commerce in the United States. This process could be accomplished through a variety of options, including, for example, by means of a consent decree, into which Albaugh would be willing to enter on reasonable terms.

In summary, Albaugh believes that EPA should terminate Albaugh's obligations under the Test Rule for the following reasons:

1. Albaugh is not presently manufacturing or importing the Test Chemical, and there are no existing stocks of the Test Chemical in the United States;
2. Albaugh has no intention to manufacture or import the Test Chemical for any purpose now or in the future;

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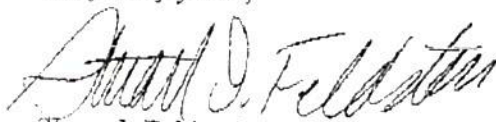
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3. It is uncertain whether additional amounts of the Test Chemical can even be obtained by Albaugh, and even if it could, the material would be imported into the United States solely for test purposes and then would have to be discarded;
4. Albaugh complied at all times with the applicable provisions of TSCA and the applicable deadlines in notifying the Agency of its intent to test the Test Chemical and submitting, in good faith, protocols for conducting tests according to the Test Rule, which protocols have yet to be approved by the Agency.

We appreciate your consideration of this request and look forward to the opportunity to meet with you next week on May 15<sup>th</sup> at 9:00 a.m. to discuss this matter further. In the meantime, please call me if you have additional questions.

Very truly yours,

  
Stuart I. Feldstein

SIF:

Cc: David Williams, EPA  
Oksana Pozda, EPA  
Robert Perlis, EPA  
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